



STATE BOARD OF EQUALIZATION

February 4, 1970

Dear Mr.

This is with reference to the petition and claim for refund filed by "C" and the hearing held on the matter last January 15 in San Francisco, California.

The item on which tax was paid under protest involved a purchase of assembly labor performed in Germany, by the manufacturer, on two generators which had been ordered for delivery f.o.b. Moccasin, California, by the City and County of "X".

The work was paid for by "C" who passed on the costs to "X". "C" is now trying to collect from them.

The labor "C" paid for has been deemed to be fabrication of the generators. We understand that originally the plan was to ship the generators in a partly fabricated condition, along with components necessary to complete the fabrication at Moccasin. This was thought to be the better way to do it because of the great size of the completely fabricated generators.

"C" entered into a contract with "X" to assemble and install the generators at the Moccasin Powerhouse. However, experts who were employed by "C" decided that the generators did not need to be shipped in a partly fabricated condition, and "C", therefore, entered into a contract for certain work to complete the fabrication of the generators in Germany before they were to be shipped to Moccasin.

The price quoted "C" for the extra work was broken down and included \$9,750 for each generator for cost at factory, extra handling and inland freight. There was added ocean freight to Stockton, California, in the amount of \$7,750 on each generator and \$1,250 for inland freight from Stockton to the jobsite on each generator. The total cost was \$37,500, of which \$18,000 was added freight costs due to the bulk or change in shipping requirements when the generators were in the assembled condition. "C"'s purchase order indicated no tax because the purchase was for resale.

It is our opinion that "c" made a purchase (the additional fabrication) which it acquired when the assembled generators arrived in Stockton, California, and were approved there by "C".

Purchase is defined under subdivision (b) of Section 6010 of the Revenue and Taxation Code as follows:

"Purchase' means and includes:

“(b) When performed outside this state or when the customer given a resale certificate pursuant to Article 3 of Chapter 2 of this part, the ...fabricating ...of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the ...fabricating ...”

Thus, one has made a purchase if the thing ordered and acquired is intangible labor for fabrication on tangible personal property furnished directly or indirectly to the fabricator.

"C" purchased the fabrication for resale to "X" and upon receipt of the completed generators in California had a vested interest in them which was inextricable so long as the generators remained assembled. In substance, "C" acquired by purchase an interest in the generators (fabrication) which it sold to "X".

If the generator components had been shipped to Moccasin unassembled as originally contemplated, "X" would have purchased an unfinished pair of generators and any assembly (fabrication) by "C" or anyone else at Moccasin would have been part of the manufacturing process. The charge for such assembly would be just as taxable as it would have been if the manufacturer in Germany had dealt directly with "X" for the complete fabrication of the generators before shipment to California.

Obviously, the generators had to be completely fabricated (finished) somewhere along the line, by someone, before they could be installed and used, and it makes no difference who did the work as far as any question of whether the labor was fabrication is concerned.

This situation might be likened to a hypothetical case where "X" purchased (direct) an automobile from "M" under a plan whereby the components were to be shipped from "M" out of state for assembly in California. In other words, the automobile is not fully manufactured or fabricated prior to shipment. Then, "X" enters into a contract with a dealer in California to assemble and service the car when it arrives in California. However, the dealer decides that the car can be fully assembled out of state and shipped fully assembled rather than broken down so the dealer contracts with the manufacturer to complete the assembly and ship the car to the dealer where, after approval of the assembly, the dealer pays for the work contracted.

The work necessary to complete the car is fabrication labor and is not deductible from the selling price, no matter who pays for it. In our hypothetical automobile case, the dealer paid the manufacturer for the necessary assembly done out of state and then passed it on to "X" just like any purchase for resale. The fabrication purchased for resale and resold is subject to tax.

The letter "C" received from "F" showing the breakdown of costs for the fabrication subsequently ordered shows \$9,000 to be for shipping charges on one generator. These charges are not a part of the fabrication labor and the transaction was not for a delivered price" within the meaning of the term as it was used when the transaction took place.

"... where the agreement provides that title passes to the purchaser upon delivery to the purchaser, a plant price is quoted, and actual delivery expense by the carrier is added hereto, the delivery charges may be excluded from the measure of the tax." (Tax Counsel Opinion, Cal. Tax Serv., 1337.30, 4/17/64.)

Here is a plant price of \$9,750 was quoted to "C" before a purchase order was issued by "C". Also actual delivery expense was quoted and separately stated.

We are recommending that the petition for redetermination be granted and that the measure of tax be adjusted to reflect a fabrication charge of \$9,750 on each generator. After the adjustment and computation of tax and interest on the lesser figure, we are recommending a refund of the difference between the amount recomputed to be due and the amount paid.

If, after considering our proposed recommendation, you desire a hearing before the Board on the issue of liability for the fabrication purchase which was resold to "X", please notify us in writing within three weeks.

Incidentally, if "C" does not prevail in efforts to be reimbursed for the cost of the fabrication, "C" should be eligible for a bad debt credit for tax paid on the fabrication.

Very truly yours,

Robert H. Anderson
Tax Counsel

RHA/vs [lb]